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AMENDED IN SENATE JUNE 13, 2002
AMENDED IN SENATE MAY 14, 2002
AMENDED IN SENATE APRIL 22, 2002
AMENDED IN SENATE AUGUST 20, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1068

**Introduced by Assembly Member Wright
(Coauthor: Assembly Member Nation)**

February 23, 2001

An act to amend Sections 1785.16.2, 1785.20.3, 1786.16, 1786.29, ~~and 1786.53~~ 1786.53, ~~and 1798.85~~ of, and to add Sections 1786.40 and 1786.55 to, the Civil Code, relating to ~~investigative consumer reports~~ *personal information*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1068, as amended, Wright. ~~Investigative consumer reports~~
Personal information.

(1) The Consumer Credit Reporting Agencies Act regulates consumer credit reporting agencies and the manner in which these agencies assemble and evaluate consumer credit information, as specified. Existing law prohibits the sale of a consumer debt if the file of the consumer is blocked, as specified, or if the consumer provides in writing that the debt is not his or her obligation due to identity theft.

Existing law exempts from those prohibitions the sale of a debt to a subsidiary or affiliate of the creditor.

This bill would revise and recast those provisions, and define the term “debt collector.” The bill would additionally require, for continual exemption from those prohibitions, that a subsidiary or affiliate not take any action to collect on the debt.

(2) Existing law establishes a process by which any person who uses a consumer credit report in connection with a credit transaction is required to verify the address of the consumer, confirm that the transaction is not the result of identity theft, and verify the identity of the consumer, under specified circumstances.

This bill would delete those provisions and establish a different process by which any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit is required to make verifications and confirmations, under specified circumstances. The bill would require a creditor to provide written notice to a victim of identity theft of his or her rights, pursuant to specified provisions. The bill would exempt certain entities, as specified, from certain notice requirements. *The bill would also exclude from these provisions a United States Army or Air Force post office address or a United States Fleet post office address.*

(3) Existing law requires that a person that procures or causes to be prepared an investigative consumer report in connection with the underwriting of insurance or for employment purposes other than suspicion of wrongdoing meet specified conditions, including, but not limited to, the name and address of the agency conducting the investigation, the nature and scope of the investigation, and information on consumer inspection.

This bill would impose further requirements on ~~a person that requests or prepares~~ *the recipient of* an investigative consumer report, as specified, unless the report is procured or caused to be prepared by an employer for employment purposes due to suspicion of wrongdoing or misconduct.

(4) Existing law requires an investigative consumer reporting agency to attach notices as cover sheets to any report, in at least 16-point type, setting forth disclosures and warnings, as specified, and to send a copy to the subject of the report.

This bill would require those notices to be placed on the first page of an investigative consumer report in 12-point boldface type, including a notice providing that information generated as a result of identity



theft, including evidence of criminal activity, may be inaccurately associated with the subject of the report. The bill would also delete the copy requirement.

(5) Existing law permits an investigative consumer reporting agency to prepare an investigative consumer report for various purposes and entities.

This bill would provide that if an investigative consumer report results in the denial of a specified insurance policy or the increase of the hiring of a dwelling unit, the user of the report is to notify the consumer of that adverse action and the name and address of the agency that made the report.

(6) Existing law provides that any person that collects consumer information, without the services of an investigative consumer reporting agency, provide that information to the consumer, as specified.

This bill would instead require that any person that collects or receives consumer information for employment purposes that constitute matters of public record, as defined, to provide that information on no more than one occasion to the consumer in a specified form. The bill would require that any person prior to taking adverse action in response to that information give the consumer a copy of the public record. The bill would also require that person to provide specified information on any job application form, or any other written form, to permit a consumer to waive his or her right to receive that information, except as specified.

(7) Existing law requires an employer to make employee personnel records available for review, with specified exceptions, and permits an employer or employment agency to obtain employee information without the use of an investigative consumer reporting agency. Existing law generally provides that attorney-client communications and attorney work product are privileged, with exceptions.

This bill would declare that these provisions are unaffected by the bill.

(8) *Existing law prohibits any person or entity, not including a state or local agency, as of July 1, 2002, from using an individual's social security number in certain ways, including posting it publicly or requiring it for access to products or services.*

This bill would exempt any financial institution from that prohibition until July 1, 2003, for specified purposes.



(9) This bill would provide that the requirement that a creditor is to provide written notice to a consumer identified as a victim of identity theft of his or her rights is to become operative 90 days after the effective date of this measure.

~~(9)~~

(10) *This bill would declare that it is intended to clarify the law in relation to the users of consumer credit reports.*

(11) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.16.2 of the Civil Code is amended
2 to read:

3 1785.16.2. (a) No creditor may sell a consumer debt to a debt
4 collector, as defined in 15 U.S.C. Sec. 1692a, if the consumer is
5 a victim of identity theft, as defined in Section 1798.2, and with
6 respect to that debt, the creditor has received notice pursuant to
7 subdivision (k) of Section 1785.16.

8 (b) Subdivision (a) does not apply to a creditor's sale of a debt
9 to a subsidiary or affiliate of the creditor, if, with respect to that
10 debt, the subsidiary or affiliate does not take any action to collect
11 the debt.

12 (c) For the purposes of this section, the requirement in 15
13 U.S.C. Sec. 1692a, that a person must use an instrumentality of
14 interstate commerce or the mails in the collection of any debt to be
15 considered a debt collector, does not apply.

16 SEC. 2. Section 1785.20.3 of the Civil Code is amended to
17 read:

18 1785.20.3. (a) Any person who uses a consumer credit report
19 in connection with the approval of credit based on an application
20 for an extension of credit, and who discovers that the address on
21 the credit application does not match, within a reasonable degree
22 of certainty, the address or addresses listed, if any, on the consumer
23 credit report, shall take reasonable steps to verify the accuracy of
24 the address provided on the application to confirm that the
25 extension of credit is not the result of identity theft, as defined in
26 Section 1798.92.



(b) Any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit, and who has received notification pursuant to subdivision (k) of Section 1785.16 that the applicant has been a victim of identity theft, as defined in Section 1798.92, may not lend money or extend credit without taking reasonable steps to verify the consumer's identity and confirm that the application for an extension of credit is not the result of identity theft.

(c) Any consumer who suffers damages as a result of a violation of this section by any person may bring an action in a court of appropriate jurisdiction against that person to recover actual damages, court costs, attorney's fees, and punitive damages of not more than thirty thousand dollars (\$30,000) for each violation, as the court deems proper.

(d) As used in this section, "identity theft" has the meaning given in subdivision (b) of Section 1798.92.

(e) For the purposes of this section, "extension of credit" does not include an increase in an existing open-end credit plan, as defined in Regulation Z of the Federal Reserve System (12 C.F.R. 226.2), or any change to or review of an existing credit account.

(f) If a consumer provides initial written notice to a creditor that he or she is a victim of identity theft, as defined in subdivision (d) of Section 1798.92, the creditor shall provide written notice to the consumer of his or her rights under subdivision (k) of Section 1785.16.

(g) The provisions of subdivisions (k) and (l) of Section 1785.16 do not apply to a consumer credit reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer credit reporting agency or the databases of multiple consumer credit reporting agencies, and does not maintain a permanent database of credit information from which new credit reports are produced.

(h) *This section does not apply to a United States Army or Air Force post office address or a United States Fleet post office address.*

SEC. 3. Section 1786.16 of the Civil Code is amended to read:

1786.16. (a) Any person described in subdivision (d) of Section 1786.12 shall not procure or cause to be prepared an

1 investigative consumer report unless the following applicable
2 conditions are met:

3 (1) If an investigative consumer report is sought in connection
4 with the underwriting of insurance, it shall be clearly and
5 accurately disclosed in writing at the time the application form,
6 medical form, binder, or similar document is signed by the
7 consumer that an investigative consumer report regarding the
8 consumer's character, general reputation, personal characteristics,
9 and mode of living may be made. If no signed application form,
10 medical form, binder, or similar document is involved in the
11 underwriting transaction, the disclosure shall be made to the
12 consumer in writing and mailed or otherwise delivered to the
13 consumer not later than three days after the report was first
14 requested. The disclosure shall include the name and address of
15 any investigative consumer reporting agency conducting an
16 investigation, plus the nature and scope of the investigation
17 requested, and a summary of the provisions of Section 1786.22.

18 (2) If, at any time, an investigative consumer report is sought
19 for employment purposes other than suspicion of wrongdoing or
20 misconduct by the subject of the investigation, the person
21 procuring or causing the report to be made shall, prior to
22 requesting the report or not later than three days after the date on
23 which the report was first requested, notify the consumer in
24 writing that an investigative consumer report regarding the
25 consumer's character, general reputation, personal characteristics,
26 and mode of living may be made. This notification shall include
27 the name and address of the investigative consumer reporting
28 agency conducting the investigation, the nature and scope of the
29 investigation requested, and a summary of the provisions of
30 Section 1786.22. The person requesting the investigative
31 consumer report may not procure the report, or cause the report to
32 be made, with respect to any consumer, unless:

33 (A) The person procuring or causing the report to be made has
34 a permissible purpose, as defined in Section 1786.12.

35 (B) The person procuring or causing the report to be made
36 provides a clear and conspicuous disclosure in writing to the
37 consumer at any time before the report is procured or caused to be
38 made, or not later than three days after the date on which the report
39 was first requested, in a document that consists solely of the
40 disclosure, that:

1 (i) An investigative consumer report may be obtained.

2 (ii) The permissible purpose of the report is identified.

3 (iii) The disclosure may include information on the consumer's
4 character, general reputation, personal characteristics, and mode
5 of living.

6 (iv) Identifies the name, address, and telephone number of the
7 investigative consumer reporting agency conducting the
8 investigation.

9 (v) Notifies the consumer in writing of the nature and scope of
10 the investigation requested, including a summary of the provisions
11 of Section 1786.22.

12 (C) The consumer has authorized in writing the procurement of
13 the report on the disclosure form.

14 (3) If an investigative consumer report is sought in connection
15 with the hiring of a dwelling unit, as defined in subdivision (c) of
16 Section 1940, the person procuring or causing the request to be
17 made shall, not later than three days after the date on which the
18 report was first requested, notify the consumer in writing that an
19 investigative consumer report will be made regarding the
20 consumer's character, general reputation, personal characteristics,
21 and mode of living. The notification shall also include the name
22 and address of the investigative consumer reporting agency that
23 will prepare the report and a summary of the provisions of Section
24 1786.22.

25 (4) The person procuring or causing the request to be made
26 shall certify to the investigative consumer reporting agency that
27 the person has made the applicable disclosures to the consumer
28 required by this subdivision and that the person will comply with
29 subdivision (b).

30 (5) The person procuring the report or causing it to be prepared
31 agrees to provide a copy of the report to the subject of the
32 investigation, as provided in subdivision (b).

33 (b) Any person described in subdivision (d) of Section 1786.12
34 who requests an investigative consumer report, in accordance with
35 subdivision (a), regarding that consumer, shall do the following:

36 (1) Provide the consumer a means by which the consumer may
37 indicate on a written form, by means of a box to check, that the
38 consumer ~~either wishes or does not wish~~ *wishes* to receive a copy
39 of any report that is prepared. If the consumer wishes to receive a
40 copy of the report, the ~~person requesting the report shall request~~

1 ~~that the person preparing the report provide a copy to the~~
2 ~~consumer, or provide a copy themselves. The person who prepared~~
3 ~~the report, or the recipient of the report, shall send a copy of the~~
4 ~~report to the consumer within three business days of the date that~~
5 ~~the report is provided to the person who requested the report~~
6 ~~recipient, who may contract with any other entity to send a copy~~
7 ~~to the consumer.~~ The notice to request the report may be contained
8 on either the disclosure form, as required by subdivision (a), or a
9 separate consent form. The copy of the report shall contain the
10 name, address, and telephone number of the person who issued the
11 report and how to contact them.

12 (2) Comply with Section 1786.40, if the taking of adverse
13 action is a consideration.

14 (c) Subdivisions (a) and (b) do not apply to an investigative
15 consumer report procured or caused to be prepared by an
16 employer, if the report is sought for employment purposes due to
17 suspicion held by an employer of wrongdoing or misconduct by
18 the subject of the investigation.

19 (d) Those persons described in subdivision (d) of Section
20 1786.12 constitute the sole and exclusive class of persons who may
21 cause an investigative consumer report to be prepared.

22 SEC. 4. Section 1786.29 of the Civil Code is amended to read:
23 1786.29. An investigative consumer reporting agency shall
24 provide the following notices on the first page of an investigative
25 consumer report:

26 (a) A notice in at least 12-point boldface type setting forth that
27 the report does not guarantee the accuracy or truthfulness of the
28 information as to the subject of the investigation, but only that it
29 is accurately copied from public records, and information
30 generated as a result of identity theft, including evidence of
31 criminal activity, may be inaccurately associated with the
32 consumer who is the subject of the report.

33 (b) An investigative consumer reporting agency shall provide
34 a consumer seeking to obtain a copy of a report or making a request
35 to review a file, a written notice in simple, plain English and
36 Spanish setting forth the terms and conditions of his or her right
37 to receive all disclosures, as provided in Section 1786.26.

38 SEC. 5. Section 1786.40 is added to the Civil Code, to read:

39 1786.40. (a) Whenever insurance for personal, family, or
40 household purposes, employment, or the hiring of a dwelling unit

involving a consumer is denied, or the charge for that insurance or the hiring of a dwelling unit is increased either wholly or partly because of information contained in an investigative consumer report from an investigative consumer reporting agency, the user of the investigative consumer report shall so advise the consumer against whom the adverse action has been taken and supply the name and address of the investigative consumer reporting agency making the report.

(b) Whenever insurance for personal, family, or household purposes involving a consumer is denied or the charge for that insurance is increased, either wholly or in part because of information obtained from a person other than an investigative consumer reporting agency, the consumer, or another person related to the consumer and acting on the consumer's behalf and bearing upon the consumer's general reputation, personal characteristics, or mode of living, the user of the information shall, within a reasonable period of time, and upon the consumer's written request for the reasons for the adverse action received within 60 days after learning of the adverse action, disclose the nature and substance of the information to the consumer. The user of the information shall clearly and accurately disclose to the consumer his or her right to make this written request at the time the adverse action is communicated to the consumer.

SEC. 6. Section 1786.53 of the Civil Code is amended to read:

1786.53. (a) Any person who collects, assembles, evaluates, compiles, reports, transmits, transfers, or communicates information on a consumer's character, general reputation, personnel characteristics, or mode of living, for employment purposes, which are matters of public record, and does not use the services of an investigative consumer reporting agency, shall provide that information to the consumer pursuant to subdivision

(b). *For purposes of this section:*

~~For purposes of this section:~~

(1) "Adverse action," as relating to employment, means a denial of employment or any decision made for an employment purpose that adversely affects any current or prospective employee.

(2) The term "person" does not include an agency subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8).

(3) “Public records” means records documenting an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment.

(b) (1) Any person described in subdivision (a), or any person who receives information pursuant to subdivision (a), shall provide a copy of the related public record to the consumer within seven days after receipt of the information, regardless of whether the information is received in a written or oral form.

(2) Any person shall provide on any job application form, or any other written form, a box that, if checked by the consumer, permits the consumer to waive his or her right to receive a copy of any public record obtained pursuant to this section.

(3) If any person obtains a public record pursuant to this section for the purpose of conducting an investigation for suspicion of wrongdoing or misconduct by the subject of the investigation, the person may withhold the information until the completion of the investigation. Upon completion, the person shall provide a copy of the public record pursuant to paragraph (1), unless the consumer waived his or her rights pursuant to paragraph (2).

(4) If any person takes any adverse action as a result of receiving information pursuant to subdivision (a), the person shall provide to the consumer a copy of the public record, regardless of whether the consumer waived his or her rights pursuant to paragraph (2).

(c) Nothing in subdivision (a) or (b) requires any person to provide the same information to any consumer on more than one occasion.

SEC. 7. Section 1786.55 is added to the Civil Code, to read: 1786.55. Nothing in this chapter is intended to modify Section 1198.5 of the Labor Code or existing law concerning information obtained by an employer or employment agency without the use of the services of an investigative consumer reporting agency for employment reference checks, background investigations, credential verifications, or employee investigations, except as provided in Section 1786.53. Nothing in this chapter is intended to change or supersede existing law related to privileged attorney-client communications or attorney work product, or require the production or disclosure of that information. This section does not constitute a change in, but is

1 declaratory of, existing law relating to investigative consumer
2 reports.

3 SEC. 8. *Section 1798.85 of the Civil Code is amended to read:*

4 1798.85. (a) A person or entity, not including a state or local
5 agency, shall not do any of the following:

6 (1) Publicly post or publicly display in any manner an
7 individual's social security number. "Publicly post" or "publicly
8 display" means to intentionally communicate or otherwise make
9 available to the general public.

10 (2) Print an individual's social security number on any card
11 required for the individual to access products or services provided
12 by the person or entity.

13 (3) Require an individual to transmit his or her social security
14 number over the Internet unless the connection is secure or the
15 social security number is encrypted.

16 (4) Require an individual to use his or her social security
17 number to access an Internet Web site, unless a password or unique
18 personal identification number or other authentication device is
19 also required to access the Web site.

20 (5) Print an individual's social security number on any
21 materials that are mailed to the individual, unless state or federal
22 law requires the social security number to be on the document to
23 be mailed. Notwithstanding this provision, applications and forms
24 sent by mail may include social security numbers.

25 (b) Except as provided in subdivision (c), subdivision (a)
26 applies only to the use of social security numbers on or after July
27 1, 2002, *except prior to July 1, 2003, any financial institution may*
28 *print an individual's social security number on any account*
29 *statement or similar document mailed to that individual, if the*
30 *social security number is provided in connection with a*
31 *transaction governed by the rules of the National Automated*
32 *Clearing House Association, or a transaction initiated by a federal*
33 *governmental entity through an automated clearing house*
34 *network.*

35 (c) Except as provided in subdivision (f), a person or entity, not
36 including a state or local agency, that has used, prior to July 1,
37 2002, an individual's social security number in a manner
38 inconsistent with subdivision (a), may continue using that
39 individual's social security number in that manner on or after July
40 1, 2002, if all of the following conditions are met:

1 (1) The use of the social security number is continuous. If the
2 use is stopped for any reason, subdivision (a) shall apply.

3 (2) The individual is provided an annual disclosure,
4 commencing in the year 2002, that informs the individual that he
5 or she has the right to stop the use of his or her social security
6 number in a manner prohibited by subdivision (a).

7 (3) A written request by an individual to stop the use of his or
8 her social security number in a manner prohibited by subdivision
9 (a) shall be implemented within 30 days of the receipt of the
10 request. There shall be no fee or charge for implementing the
11 request.

12 (4) A person or entity, not including a state or local agency,
13 shall not deny services to an individual because the individual
14 makes a written request pursuant to this subdivision.

15 (d) This section does not prevent the collection, use, or release
16 of a social security number as required by state or federal law or
17 the use of a social security number for internal verification or
18 administrative purposes.

19 (e) This section does not apply to documents that are recorded
20 or required to be open to the public pursuant to Chapter 3.5
21 (commencing with Section 6250), Chapter 14 (commencing with
22 Section 7150) or Chapter 14.5 (commencing with Section 7220)
23 of Division 7 of Title 1 of, or Chapter 9 (commencing with Section
24 54950) of Part 1 of Division 2 of Title 5 of, the Government Code.
25 This section does not apply to records that are required by statute,
26 case law, or California Rule of Court, to be made available to the
27 public by entities provided for in Article VI of the California
28 Constitution.

29 (f) (1) In the case of a health care service plan, a provider of
30 health care, an insurer or a pharmacy benefits manager, or a
31 contractor as defined in Section 56.05, this section shall become
32 operative in the following manner:

33 (A) On or before January 1, 2003, the entities listed in
34 paragraph (1) of subdivision (f) shall comply with paragraphs (1),
35 (3), (4), and (5) of subdivision (a) as these requirements pertain to
36 individual policyholders.

37 (B) On or before January 1, 2004, the entities listed in
38 paragraph (1) of subdivision (f) shall comply with paragraphs (1)
39 to (5), inclusive, of subdivision (a) as these requirements pertain

1 to new individual policyholders and new employer groups issued
2 on or after January 1, 2004.

3 (C) On or before July 1, 2004, the entities listed in paragraph
4 (1) of subdivision (f) shall comply with paragraphs (1) to (5),
5 inclusive, of subdivision (a) for all policyholders and for all
6 enrollees of the Healthy Families and Medi-Cal programs, except
7 that individual and employer group policyholders in existence
8 prior to January 1, 2004, shall comply upon their renewal date, but
9 no later than July 1, 2005.

10 (2) A health care service plan, a provider of health care, an
11 insurer or a pharmacy benefits manager, or a contractor shall make
12 reasonable efforts to cooperate, through systems testing and other
13 means, to ensure that the requirements of this article are
14 implemented on or before the dates specified in this section.

15 (3) Notwithstanding paragraph (2), the Director of the
16 Department of Managed Health Care, pursuant to the authority
17 granted under Section 1346 of the Health and Safety Code, or the
18 Insurance Commissioner, pursuant to the authority granted under
19 Section 12921 of the Insurance Code, and upon a determination of
20 good cause, may grant extensions not to exceed six months for
21 compliance by health care service plans and insurers with the
22 requirements of this section when requested by the health care
23 service plan or insurer. Any extension granted shall apply to the
24 health care service plan or insurer's affected providers, pharmacy
25 benefits manager, and contractors.

26 (g) If a federal law takes effect requiring the United States
27 Department of Health and Human Services to establish a national
28 unique patient health identifier program, a provider of health care,
29 a health care service plan, a licensed health care professional, or
30 a contractor, as those terms are defined in Section 56.05, that
31 complies with the federal law shall be deemed in compliance with
32 this section.

33 *SEC. 9.* The changes made by this act to subdivision (f) of
34 Section 1785.20.3 of the Civil Code shall become operative 90
35 days after the effective date of this act.

36 ~~SEC. 9:~~

37 *SEC. 10.* *The changes made by this act to Sections 1785.20.3*
38 *and 1786.53 of the Civil Code, excluding the addition of*
39 *subdivision (f) to Section 1785.20.3 of the Civil Code and the*
40 *addition of Section 1786.55 to the Civil Code, are intended to*

1 *clarify the law, duties, and obligations of the users of consumer*
2 *credit reports pursuant to Chapter 354 of the Statutes of 2001.*

3 *SEC. 11.* This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety
5 within the meaning of Article IV of the Constitution and shall go
6 into immediate effect. The facts constituting the necessity are:

7 In order to clarify confusion over the operational provisions of
8 Chapter 354 of the Statutes of 2001, and further protect consumer
9 interests in relation to credit information and identity theft, it is
10 necessary that this act take immediate effect.

